

PRACTICES AND PROCEDURES OF MAGISTRATE JUDGE ROBERT C. MITCHELL

I. GENERAL MATTERS

A. Communication with the Court

Magistrate Judge Mitchell will permit correspondence with the Court in lieu of motion practice in matters such as rescheduling status conferences. This may be done by telephone or by letter. Other motions, such as discovery motions, must be made by formal motion.

B. Communications with Staff

Magistrate Judge Mitchell permits communications with his staff to discuss administrative matters and to inquire as to the status of pending motions.

C. Telephone Conferences

Magistrate Judge Mitchell will handle status conferences by telephone under certain circumstances, such as cases involving out-of-town counsel. The Judge, however, prefers local counsel to be present for the conference.

D. Pro Hac Vice Admissions

Magistrate Judge Mitchell has no policy or requirements governing pro hac vice admissions. Generally, if motions for pro hac vice are filed, the Judge will abstain from ruling on the motion and defer to the trial Judge for his ruling.

E. Comment to the Media

Although Magistrate Mitchell does not think it appropriate for counsel to make comments to the media about a pending case, he has no policy regarding media contact.

II. MOTIONS PRACTICE

A. Oral Argument

Magistrate Judge Mitchell permits oral argument on pretrial motions in very limited situations. Oral argument is granted only if requested by counsel, and, in a situation which the Judge deems appropriate. The Judge does not set aside any specific day or time to hold such arguments.

B. Briefs

For all motions, except for enlargement of time, Magistrate Judge Mitchell requires briefs to be filed at the time the motion is filed. Reply and surreply briefs are also permitted. The Judge, however, prefers that briefs be limited to under ten pages.

C. Chambers Copies of Motions

Magistrate Judge Mitchell strongly prefers that no courtesy copies of pleadings be sent to chambers.

D. Scheduling

Generally, Magistrate Judge Mitchell discusses the filing of dispositive motions at the time of the initial status conference. At that time, the Judge will specify the number of days within which a party must file its response to the motion. The Judge will usually order a response to be filed within twenty days of receipt of the motion. If a brief is to be filed in support of a motion, it must be filed simultaneously with the motion.

E. Evidentiary Hearings

Evidentiary hearings on pretrial matters are generally scheduled one week prior to the trial date. Magistrate Judge Mitchell will advise counsel of his ruling at the final pretrial conference prior to trial.

F. In Limine Motions

Magistrate Judge Mitchell prefers that motions in limine be filed prior to trial. The Judge will then rule on these issues before trial.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

Magistrate Mitchell does not issue a standard pretrial order. He does not require that pretrial statements contain any items other than those identified in Rule 16.1.d.

2. Pretrial Conference

After the filing of any answer by the defendant, Magistrate Judge Mitchell will schedule an initial status conference with the parties. At that conference, Magistrate Judge Mitchell will set dates for the discovery period. The Judge will hold at least one additional conference midway through the discovery period and thereafter a pretrial conference and a final conference before trial.

3. Settlement

Magistrate Mitchell follows Local Rule 16.1.D in requiring that counsel and client, or person with authority, be present at settlement discussions. If counsel has authority to settle the case, it is sufficient to have the client available by telephone if needed. On several occasions the Magistrate Judge has suggested the possibility of alternate dispute resolution. The Judge will also suggest

parties participate in the court-annexed mediation program.

4. Arbitration

Eligible cases are routinely referred to the Court-Annexed Arbitration program, unless parties opt-out within the time limit specified in the Local Rule. The Judge is reluctant to grant extensions of time in Arbitration cases once a hearing has been scheduled.

5. Extensions and Continuances

Magistrate Judge Mitchell does not have any special rules regarding requests for extensions or continuances. The Judge is generally amenable to granting reasonable extensions of discovery deadlines or briefing schedules. With regard to scheduled conferences or hearings, the Judge is reluctant to reschedule these matters without good cause.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Magistrate Judge Mitchell generally allows 90-120 days for the parties to complete discovery. However, the Judge may lengthen or shorten this period depending on the complexity of any given case. He is amenable, however, to granting reasonable extensions in situations where they are required.

2. Expert Witnesses

Magistrate Judge Mitchell does not have a general policy with respect to discovery depositions of expert witnesses.

3. Deposition Disputes

Magistrate Judge Mitchell will entertain telephone calls from attorneys at a deposition where his assistance is needed to resolve a discovery dispute.

4. Stay of Discovery

If a dispositive motion is filed in lieu of an answer, or if counsel advised the Court of his or her intention to file such motion at the initial status conference, the Magistrate Judge will stay discovery during the pendency of the motion, unless discovery is necessary for disposition of the motion. However, if the motion is filed during discovery, the Judge will not stay further discovery unless requested by counsel. The Judge believes that discovery should be stayed during the pendency of a “sincere” dispositive motion in an attempt to keep litigation as inexpensive as possible.

5. Limitations on Discovery

Magistrate Judge Mitchell has not previously imposed any restrictions on the

number of interrogatories, depositions, or the use of other discovery procedures. However, he will not permit discovery whose purpose is to harass the opposing party or counsel.

6. Rule 11 and Rule 37 Motions for Sanctions

Magistrate Judge Mitchell does not defer ruling on Rule 11 or Rule 37 motions until the conclusion of the case. He require briefs to be filed with the motions. If necessary he will issue a briefing schedule. The Judge has awarded costs and fees in both Rule 11 and Rule 37 motions.

C. Injunctions and TRO's

When injunctions are referred by a District Court Judge for Report and Recommendation, a briefing schedule will be issued and a hearing date will be scheduled.

D. Trial Procedures

1. Scheduling of cases

All trials which are scheduled before Magistrate Judge Mitchell are given a date certain for trial, therefore, he does not schedule backup cases.

Magistrate Judge Mitchell schedules all trials several months in advance. Counsel is involved in the scheduling of trial and the Judge will accommodate their vacations schedules and matters pending in other courts at the time of scheduling. However, once a trial date is set, he is reluctant to reschedule it.

2. Trial Hours/Days

Magistrate Judge Mitchell tries cases from 9:30 a.m. to 4:30 p.m. on Monday through Friday.

3. Trial Briefs

Magistrate Judge Mitchell permits, but does not require, the filing of trial briefs. If a brief is to be filed, the Judge prefers that it be ten pages or less.

4. Voir Dire

Magistrate Judge Mitchell will conduct voir dire of potential jurors. Counsel are not permitted to conduct any part of the voir dire. Although counsel may submit proposed voir dire for the Court's consideration one week prior to the start of trial, the Court will generally not deviate from its standard voir dire questions.

5. Note Taking by Jurors

Note taking by jurors is not permitted. Magistrate Judge Mitchell believes that if notetaking was permitted, jurors would spend more time taking notes than

listening to the witnesses and relying on their own memories.

6. Side Bars

Magistrate Judge Mitchell permits side bar conference, but discourages overly repetitive use of side bars. The Judge prefers that any issue that would require a side bar conference be brought to the Court's attention outside of the presence of the jury.

7. Examination of Witnesses Out of Sequence

Magistrate Judge Mitchell will permit the examination of a witness out of sequence, either within the parties own case or within an opposing parties case if a scheduling conflict exists. However, in the event that a witness will be unavailable for trial, the witnesses testimony may be presented by deposition.

8. Opening Statement and Summations

There is no limit on the amount of time for either opening statement or summations.

9. Examination of Witnesses or Argument by More Than One Attorney

Joint counsel may divide their responsibilities with respect to witnesses. However, the Judge will not allow two lawyers to question the same witness. In addition, the lawyer who handles a particular witness must also conduct any redirect of that witness, and make objections during cross examination of the witness.

10. Examination of Witness Beyond Direct and Cross

Magistrate Judge Mitchell will permit redirect and recross of a witness, but does not usually permit any further examination.

11. Videotaped Testimony

Magistrate Judge Mitchell does not have any special procedures or requirements with respect to the use or admission of videotaped testimony. However, in the event that there are objections to the videotaped testimony, the Judge requires that the tape be played by someone who is qualified to operate and edit the tape. The Judge does not require that a professional operator be present to operate the tape, if, counsel is competent to do so.

12. Reading of Material into Record

Magistrate Judge Mitchell has no policy or rules on this point.

13. Exhibits

Magistrate Judge Mitchell requires that all exhibits be marked in advance of trial and properly identified for the record. Plaintiff's exhibits should be marked by

number and defendant's exhibits should be marked by letter.

14. Directed Verdict Motions

Magistrate Judge Mitchell has no standard requirements with respect to motions for directed verdict or motions to dismiss in non-jury cases.

15. Jury Instructions and Verdict Forms

Magistrate Judge Mitchell generally utilizes standard jury instructions from Federal Jury Practice. He will permit the submission of proposed jury instructions, but not proposed verdict forms. If proposed jury instructions are to be submitted, counsel must submit them one week prior to trial. All conferences where proposed jury instructions are discussed are held outside of the presence of the jury.

16. Proposed Findings of Fact and Conclusions of Law

Magistrate Judge Mitchell does not require, but will permit, the submission of proposed findings of fact and conclusions of law. If proposed findings are to be submitted, they must be submitted to the Court prior to trial. If supplemental findings are to be submitted during trial, they must be submitted prior to the close of trial.

17. Offers of Proof

There are no restrictions on offers of proof at trial.

18. General Courtroom Rules

Magistrate Judge Mitchell does not have any special rules regarding the conduct of attorneys during trial. The Judge, however, will not permit blatant discourtesy between counsel.

E. Jury Deliberations

1. Written Jury Instructions

Magistrate Judge Mitchell never gives the jury a written copy of his jury instructions.

2. Exhibits in the Jury Room

Magistrate Judge Mitchell permits exhibits to be provided to the jury for their deliberations, so long as counsel agrees upon the exhibits that are provided.

3. Jury Requests to Read Back Testimony or Reply Tapes During Deliberations

Magistrate Judge Mitchell has previously not permitted reading back testimony to the jury.

4. Jury Questions

If a questions is submitted to the Court, the Judge will discuss the question with counsel and obtain agreement on an appropriate answer to be given to the jury.

5. Availability of Counsel During Jury Deliberations

Counsel must be available by telephone during jury deliberations.

6. Interviewing the Jury

Magistrate Judge Mitchell advises jurors that they do not have to respond to inquiries from counsel. However, he instructs the jurors that responses may be helpful to counsel.

Although the Judge does not discourage counsel from interviewing jurors post verdict, he prefers that lawyers advise the Court of their intention to interview a juror, prior to doing so.

F. General

1. Special Types of Cases

Magistrate Judge Mitchell does not have any special procedure or practices with respect to particular types of cases. However, the Judge will utilize the standard order used by the particular District Court Judge to whom the case is assigned. In RICO cases, Magistrate Judge Mitchell requires the filing of a RICO statement.

2. Other Individual Practices/Procedures

Magistrate Judge Mitchell requires all lawyers practicing before him to be punctual.

IV. CRIMINAL CASES

The only criminal matters that are handled by Magistrate Judge Mitchell have been petty offenses, misdemeanors, and, preliminary criminal matters including arraignments. Counsel are expected to have conferred with the defendant prior to the arraignment and to appear at the scheduled time.